Niche FM Consulting Ltd - Terms of Trade

Version 1.0 | Effective 1 July 2026

1. PARTIES AND DEFINITIONS TO THIS AGREEMENT

1.1 "Niche FM Consulting Limited" or "Niche FM" means Niche FM, including its assignors, successors, employees, representatives, and agents.

1.2 "Client" means the Client, any person or entity acting for, on or behalf of the Client or with permission or authority of the Client as detailed on Quotations, Estimates or Contract Services Agreements.

1.3 "Services" means the services supplied by Niche FM and can include recommendations, consultancy advice or management.

1.4 "Price" means the price payable for the services provided by Niche FM to the Client.

2. SERVICES

2.1 The Services provided shall be described in our invoices, quotations, and/or Contract Engagement Agreement, or any other such form (such as email) to the Client.

3. PRICE AND PAYMENT

3.1 The price shall be at Niche FM's sole discretion, one or more of the following:

i. The price as quoted by Niche FM to the Client. The quoted price or rates shall not alter providing the Client accepts Niche FM's quote in writing within thirty (30) days of the date of the quotation;

ii. Niche FM price as per our current rates when the service is provided;

iii. Disbursement costs (travel, accommodation, vehicle hire) may be charged on agreement with both Client and Niche FM;

iv. The use of external suppliers / experts on your behalf at rates mutually agreed in advance; and Niche FM may engage any consultants or other contractors on behalf of Niche FM to complete the contract. The Client indemnifies Niche FM in regard to payment of all third parties.

3.2 Where Niche FM engages subcontractors, suppliers or other third parties on the Client's behalf, Niche FM does so as the Client's agent and is not obliged to incur or pay any such third-party cost until the Client has paid Niche FM for it. Niche FM is not liable for any delay in third-party performance caused by the Client's failure to pay when due.

4. PAYMENT TERMS

4.1 Niche FM may issue one or more invoice(s) to the Client for Services, at Niche FM's sole discretion and the Fee shall be either: (i) as indicated on any invoice provided by Niche FM to the Client; or (ii) Niche FM's quoted Fee.

4.2 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date(s) determined by Niche FM, which may be: (i) on the 20th of the month following issue of invoice; (ii) the date agreed between the Client and Niche FM, specified in the Contract for Services; (iii) the date specified on any invoice or other form as being the date for payment; or (iv) if there is any conflict between the Client's own payment terms and conditions, Niche FM's payment terms and conditions prevail.

4.3 Payment may be made by cash or direct bank transfer, or by any other method as agreed between the Client and Niche FM.

4.4 Receipt by Niche FM of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Niche FM may withhold or suspend the further supply of Services.

4.5 The Client shall not be entitled to set off against, or deduct from, the Fee any sums owed or claimed to be owed to the Client by Niche FM, nor to withhold payment of any invoice because part of that invoice is in dispute.

4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4.7 If full payment is not made by the Client to Niche FM in accordance with clause 4.2 above then the Client will be in default under this Contract; and (i) the Client will be liable for all expenses (including solicitor – own Client legal costs and Niche FM's collection agency costs) incurred by Niche FM as a result of the default; and (ii) Niche FM may withhold the further supply of Services.

5. ACCEPTANCE OF TERMS OF TRADE

5.1 Any engagement of Niche FM's Services shall constitute acceptance of the Terms and Conditions of Trade of Niche FM by the Client.

5.2 Niche FM may update these Terms of Trade from time to time. The version that applies to an engagement is the version published by Niche FM at the date of the relevant proposal or quotation. Any variation to the terms applying to an existing engagement must be agreed in writing by Niche FM's Directors.

5.3 Where Niche FM and the Client enter into a separate signed services agreement, management agreement or similar engagement document, that agreement prevails over these Terms of Trade to the extent of any inconsistency. Subject to that, the order of precedence is: (i) any separate signed agreement; (ii) the relevant proposal or quotation accepted by the Client; and (iii) these Terms of Trade.

6. NON-PAYMENT

6.1 If the Client defaults in payment of any invoice when due, the Client shall pay all costs and disbursements incurred by Niche FM in pursuing the debt, including legal costs on a solicitor and own Client basis and Niche FM's collection agency costs.

6.2 If at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, Niche FM may suspend or terminate the supply of Services to the Client. Niche FM will not be liable to the Client for any loss or damage the Client suffers because Niche FM has exercised its rights under this clause.

7. INTELLECTUAL PROPERTY

7.1 Niche FM and the Client agree that Niche FM retains all ownership rights in all intellectual property of any kind created by Niche FM for the Services provided to the Client. The Client may not reproduce or provide anything created by Niche FM to any third party without Niche FM's express consent. This includes, but is not limited to, design documents, project plans, templates and written works.

7.2 On full payment of all amounts due, Niche FM grants the Client a non-exclusive, perpetual licence to use the deliverables prepared specifically for the Client for the Client's own internal business purposes. This does not transfer ownership of Niche FM's underlying intellectual property, systems, templates or methodologies, which Niche FM retains.

8. VARIATIONS

8.1 No variation to the agreed scope of services shall be made without the prior written agreement of both parties.

8.2 Variations must be confirmed in writing, which may include email, and may be formalised through an updated Scope of Services, quote, or Purchase Order as agreed.

8.3 Agreed variations may result in an adjustment to the Fees and/or timeframes. Niche FM is entitled to charge for any additional work required as a result of such variation at the applicable rates unless otherwise agreed.

9. FORCE MAJEURE

9.1 Neither party shall be liable for any failure or delay in performing its obligations under this agreement where such failure or delay is caused by circumstances beyond its reasonable control. This includes (but is not limited to) acts of God, natural disasters, war, terrorism, pandemics, government restrictions, labour disputes, or failure of suppliers or contractors.

9.2 The affected party must promptly notify the other party of the event and take reasonable steps to minimise any resulting delay.

9.3 If a force majeure event continues for more than 30 days, either party may terminate this agreement by providing written notice to the other.

10. TERMINATION

10.1 This Agreement may be terminated for any reason by either party giving three months' notice in writing;

10.2 If either party breaches this contract the other party will give written notice identifying the breach and requiring the breach to be remedied by the other party. If that party fails to remedy the breach within seven days of receiving the written notice, then this Agreement may be terminated by the other party giving seven days' notice in writing to the party in breach;

10.3 Any termination by either party under the provisions of this clause shall be without prejudice to any other remedies which that party may have against the other under this Agreement.

11. LIMITATION OF LIABILITY

11.1 To the fullest extent permitted by law, Niche FM shall not be liable to the Client for any indirect, consequential, or special loss or damage, including but not limited to loss of profit, opportunity, or goodwill.

11.2 Niche FM's total liability in connection with this agreement, whether in contract, tort (including negligence), or otherwise, shall be limited to the lesser of: (i) NZD $1,000,000; or (ii) the total professional fees (being Niche FM's management fees and rate-card charges, and excluding disbursements and any amounts paid to or recovered for subcontractors, suppliers and other third parties) paid by the Client to Niche FM in the 12-month period preceding the event giving rise to the claim.

12. ASSIGNMENT

12.1 Niche FM may assign or transfer its rights and obligations under this agreement to another party, provided the assignee has the capability to perform the services to a comparable standard.

12.2 The Client may not assign or transfer its rights or obligations under this agreement without the prior written consent of Niche FM.

13. DISPUTE RESOLUTION

13.1 Any dispute relating to this agreement must be referred to non-binding mediation.

13.2 The non-binding mediation procedure is: (i) the party wishing to resolve a dispute by mediation must give notice in writing of the dispute to the other party; (ii) the notice must state that a dispute has arisen and provide sufficient detail as to the nature of the dispute so as to enable the other party to prepare a response; (iii) where a notice of dispute is given, the parties will appoint a mediator by agreement within 14 days of receipt of a notice. If the parties cannot agree on a mediator within 7 days of receipt of the notice, either party may request the President of the Canterbury District Law Society (or their nominee) to appoint a mediator. That appointment will be final and binding; (iv) the parties will actively and expeditiously engage with the mediator, and in the mediation process, in an effort to resolve the dispute.

13.3 If the dispute is not settled within 14 days of the appointment of the mediator, or within any extended time that the parties agree to in writing, then the parties will no longer be bound by this dispute resolution clause and may take any other step to resolve the dispute, including seeking urgent interlocutory relief.

14. NON-SOLICITATION

14.1 The Client will not solicit employees or contractors during the term of any contract between the parties or for a period of twelve (12) months following the conclusion of any contract or provision of services between the parties.

14.2 The Client acknowledges that all employees and contractors of Niche FM are bound by Restraint of Trade and/or non-competition provisions under their terms of employment or engagement with Niche FM.

15. INSURANCE

15.1 Each party agrees to maintain appropriate insurance coverage relevant to their obligations under this agreement.

15.2 Niche FM shall maintain public liability and professional indemnity insurance to cover risks arising from the provision of its services.

15.3 The Client is responsible for maintaining insurance, statutory insurances, and any other coverage relevant to the ownership, operation, or occupation of the site.

15.4 Proof of insurance may be provided upon reasonable request.

16. GOVERNING LAW AND JURISDICTION

16.1 These Terms of Trade and any engagement to which they apply are governed by the laws of New Zealand, and the parties submit to the exclusive jurisdiction of the New Zealand courts.

17. CONTRACTING OUT

17.1 The Client warrants that it is acquiring the Services for the purposes of a business. To the extent that both parties are in trade and it is fair and reasonable to contract out under section 5D of the Consumer Guarantees Act 1993 and section 5C of the Fair Trading Act 1986, the parties agree that the Consumer Guarantees Act 1993 does not apply, and that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply, to the Services.

18. PRIVACY

18.1 Niche FM collects, holds and uses personal information in accordance with the Privacy Act 2020 and its privacy policy. The Client consents to Niche FM collecting and using such information for the purpose of providing the Services and managing the engagement.